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IN THE
COURT OF APPEALS OF INDIANA

LORETTA S. ERIKSON,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 93A02-0707-EX-607
	)	
REVIEW BOARD OF THE INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT and BIO LAB, INC.,	)	
	)	
Appellees.	)	

APPEAL FROM THE REVIEW BOARD OF THE INDIANA
DEPARTMENT OF WORKFORCE DEVELOPMENT
Cause No. 07-R-01465

March 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Loretta S. Erikson, pro se,[1] appeals the decision of the Review Board of the Indiana Department of Workforce Development (the "Review Board") denying her claim for unemployment benefits.

We affirm.

ISSUES

1. Whether the Review Board properly determined that Erikson was terminated for just cause.

2. Whether the Review Board erred when it denied Erikson's request to submit additional evidence.

FACTS

Erikson worked as a general packer for Bio Lab, Inc., located in Ashley. Erikson signed and acknowledged receipt of Bio Lab's employee handbook, which set forth Bio Lab's attendance policy.

Pursuant to the attendance policy, Bio Lab manages employees' attendance with a point system, with each violation given a point value and accumulation of points leading "to the corresponding levels of discipline, in accordance with management discretion . . . ." (Bio Lab's Ex. A). The handbook sets forth the point values as follows:

Tardiness	1 point
Leaving early	1 point
Tardy on mandatory overtime	1.5 points
Missed mandatory overtime with 48 hours notice	3 points
Absence of two consecutive workdays or more, with	2 points

[1] We note that Erikson's brief fails to comply with Indiana Appellate Rules 46(A)(5), (6), (7), and (8). "It is well settled that pro se litigants are held to the same standard as are licensed lawyers." *Goossens v. Goossens*, 829 N.E.2d 36, 43 (Ind. Ct. App. 2005).

a doctor's excuse
No call/no show 4 points

The handbook further provides that "[p]oints will stand for 12 months from the date of occurrence." *Id.* Under Bio Lab's attendance policy, employees receive a verbal warning at six points; a written warning at eight points; and a final written warning at ten points. "The maximum number of points that can be accrued in a rolling 12 month period is 13," with the accrual of thirteen points resulting in termination. *Id.*

Bio Lab monitors hourly employees' attendance through the use of coded time cards, which the employees swipe through a card reader at the start and end of their shifts. Each employee is assigned his or her own personal card.

From 2004 through her termination, Erikson received several warnings due to her accumulation of points on an annual rolling basis. On February 7, 2007, Erikson received a written warning that she had accrued twelve points for being absent from work. On February 22, 2007, Erikson accrued two additional points for being absent. On or about February 26, 2007, Bio Lab discharged Erikson "for exceeding the maximum amount of attendance points allowed under [Bio Lab's] no-fault attendance policy . . . ." (Tr. 4).

On or about March 27, 2007, the Indiana Department of Workforce Development (the "IDWD") determined that Erikson "was discharged for just cause when [she] was discharged for violation of the employer's attendance policy," and found Bio Lab's attendance policy to be "reasonable and uniformly enforced . . . ." (IDWD Ex. 1). Thus, Erikson was ineligible to receive weekly unemployment insurance benefits.

On March 31, 2007, Erikson filed an appeal of the IDWD's determination. On May 16, 2007, the IDWD held an evidentiary hearing, with an Administrative Law Judge ("ALJ") presiding. The ALJ affirmed the IDWD's determination.

Erikson appealed the ALJ's decision to the Review Board and requested that it consider additional evidence. On June 27, 2007, the Review Board adopted the ALJ's findings of fact and conclusions of law, which read as follows:

> **FINDINGS OF FACT:** The claimant began employment January 31, 1991, and was discharged for violation of the attendance policy effective February 26, 2007. She worked as a general packer earning $12.94 per hour.
>
> The employer provided the ALJ with its newly revised attendance policy and a copy of the claimant's signature acknowledging she received the policy. The documentation was offered and made part of the record.
>
> The employer maintains a no fault policy which assesses points based on the amount of time missed by the employee. . . . Warnings are issued once the employee reaches six points, eight points, and at ten points. At thirteen points, the employee is discharged from employment. The ALJ finds the policy is applicable to all hourly employees. Neither party offered specific examples of inconsistent enforcement of the policy.
>
> The employer provided the ALJ with a list of the claimant's most active points and copies of signed warnings. They were made part of the record. The claimant signed warnings dated April 6, 2004, August 11, 2004, November 9, 2004, May 16, 2006, July 14, 2006, July 24, 2006, August 14, 2006, September 11, 2006, and February 6, 2007. Space is provided on warnings to allow either party to draft statements. The claimant left each warning blank.
>
> The claimant disputed the issuance of points for the final occurrence, February 22, 2007. She alleged her badge used to swipe did not work. She alleged there were witnesses. No witness attended the hearing. The claimant did not present any pay stub reflecting that she worked even though she allegedly did not swipe her badge card. She further did not present any reports from the manufacturer of the time clock system, ADP, that there was a problem with her badge or the time clock. The employer

> presented documentation from ADP, which held there was no problem with the claimant's badge and time clock. The employer's documentation was offered with objection noted.
>
> **CONCLUSIONS OF LAW:** The Indiana Employment and Training Services Act sets forth eight (8) examples of "discharge for just cause," one of which is the "knowing violation of a reasonable and uniformly-enforced rule of an employer." Ind. Code 22-4-15-1(d)(2). This sub-section requires proof that the employee (a) knowingly violated a (b) reasonable rule of the employer which was (c) uniformly enforced. To have "knowingly" violated an employer's rule, the employee (1) must know of the rule and (2) know his conduct violated the rule.
>
> The claimant was subject to the employer's attendance policy and aware of it. It is reasonable and uniformly enforced. The issue was whether the claimant knowingly violated the policy. The claimant did not present any probative rebuttal evidence to establish that her badge did not function properly, particularly, on the dates that she was assessed points. The employer did. The weight of the evidence favored the employer. Therefore the claimant did accumulate a minimum of fourteen points under the thirteen-point attendance policy. She knowingly violated the policy and was discharged pursuant to her violation of it. She was discharged for just cause and therefore ineligible for benefits under the Act.

(Erikson's Brief 12-13) (internal citations omitted). Accordingly, the Review Board affirmed the ALJ's decision.

Additional facts will be provided as necessary.

DECISION

As provided by statute, the Review Board's decision "shall be conclusive and binding as to all questions of fact." *Perfection Bakeries, Inc. v. Review Bd. of Workforce Dev.*, 783 N.E.2d 736, 739 (Ind. Ct. App. 2003) (quoting Ind. Code § 22-4-17-12(a)). When Review Board decisions are challenged as contrary to law, we examine "the sufficiency of the facts found to sustain the decision and the sufficiency of the evidence to sustain the findings of fact." *Id*. (quoting I.C. § 22-4-17-12(f)). "This standard calls

upon this court to review: (1) determinations of specific or basic underlying facts; (2) conclusions or inferences from those facts, or determinations of ultimate facts; and (3) conclusions of law." *McHugh v. Review Bd. of Workplace Dev.*, 842 N.E.2d 436, 440 (Ind. Ct. App. 2006).

We review findings of basic facts under the "substantial evidence" standard, neither reweighing the evidence nor assessing the credibility of witnesses and considering only the evidence most favorable to the Review Board's findings. *Perfection Bakeries*, 783 N.E.2d at 739. Findings of "ultimate facts" are reviewed to ensure that the Review Board's inferences from the findings of basic fact are "reasonable." *Id.* Finally, we consider whether the Review Board correctly interpreted and applied the law. *Id.*

1. Just Cause

Erikson asserts that the Review Board improperly determined that Bio Lab terminated her for just cause. Specifically, Erikson contends that she "was terminated because of a faulty timecard and faulty time clock."[2] Erikson's Br. 7.

The purpose of the Unemployment Compensation Act is to provide benefits to those who are involuntarily out of work through no fault of their own. *General Motors Corp. v. Review Bd. of Workforce Dev.*, 671 N.E.2d 493, 498 (Ind. Ct. App. 1996). A

[2] Initially, we note that Appellate Rule 46(A)(8) provides, in relevant part, that "[t]he argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . ." A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record. *Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005), *trans. denied*; *Ramsey v. Review Bd. of Workforce Dev.*, 789 N.E.2d 486 (Ind. Ct. App. 2003) (holding claimant's substantial noncompliance with rules of appellate procedure resulted in waiver of his claims). Erikson provides no citation to authority or cogent argument. Waiver notwithstanding, we shall address the merits of Erikson's argument.

claimant is ineligible for unemployment benefits if he is discharged for just cause. I.C. § 22-4-15-1(a). Discharge for just cause includes the "knowing violation of a reasonable and uniformly enforced rule of an employer." I.C. § 22-4-15-1(d)(2).

The employer bears the initial burden of establishing that an employee has been terminated for just cause. *Owen County v. Review Bd. of Workforce Dev.*, 861 N.E.2d 1282, 1292 (Ind. Ct. App. 2007). "To establish a prima facie case for violation of an employer rule under Indiana Code section 22-4-15-1(d)(2), it is necessary for the employer to show that the claimant: (1) knowingly violated; (2) a reasonable; and (3) uniformly enforced rule." *Id.* Once the employer has met its burden, the claimant must present evidence to rebut the employer's prima facie showing. *Id.*

In this case, Erikson does not dispute that Bio Lab's attendance policy was reasonable and uniformly enforced. Thus, the issue is whether Erikson "knowingly violated" Bio Lab's attendance policy.

Here, the ALJ admitted into evidence a copy of Bio Lab's employee handbook, which defines Bio Lab's attendance policy; and a copy of a document signed by Erikson, acknowledging her receipt of the handbook. The ALJ also admitted into evidence a report for the period from February 12, 2007 through February 25, 2007. According to the report, the time clock did not record Erikson clocking in or out on February 22, 2007; therefore, she was considered absent for that day. The report, however, did record Erikson clocking in and out on all other days for which she was scheduled to work. The ALJ admitted into evidence a letter from ADP, the manufacturer of Bio Lab's time clock, indicating that it tested Bio Lab's time clock on or about March 27, 2007, and determined

that it "operate[d] correctly." (Bio Lab's Ex. D). The letter also indicates that ADP tested Erikson's time card, which "passed each test." *Id.* Furthermore, the ALJ admitted into evidence several prior written warnings to Erikson regarding her attendance.

Finally, Bio Lab's human resources manager and Erikson's direct supervisor testified that at no time did Erikson request a new time card or express concern that her time card did not operate properly. Erikson, however, did not present any evidence that the time clock or her time card malfunctioned.

Erikson asks us to reweigh the evidence or reassess the credibility of the witnesses, which we will not do. We find that the evidence is sufficient to support the findings of fact, and the findings support the Review Board's determination that Erikson was terminated for just cause.

2. Additional Evidence

Erikson asserts that the Review Board erred when it denied her request to submit additional evidence.[3] We disagree.

Indiana Administrative Code title 646, section 3-12-8(b) provides, in relevant part, as follows:

> Each hearing before the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge.

[3] Again, Erikson provides no citation to authority or cogent argument.

Thus, the Review Board "has discretion to deny a request for a further hearing based on allegedly new evidence if the applicant fails to present a good reason for the failure to present the evidence at the original hearing." *McHugh*, 842 N.E.2d at 442.

Here, Erikson requested that two former employees of Bio Lab "be subpoenaed as witnesses . . . to the fact that they stood beside me for the last two months of [her] employment and watched [her] clock IN and OUT." (App. 34). Erikson also sought to submit a pay stub for the period ending February 25, 2007.

Erikson, however, failed to show good cause for not introducing the evidence during the hearing before the ALJ. Therefore, we find no abuse of discretion in not hearing additional evidence. *See Best Lock Corp. v. Review Bd. of Workforce Dev.*, 572 N.E.2d 520, 529 (Ind. Ct. App. 1991).

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.